80-210

Supreme Court, U. S.
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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NELLIE ATKINS ARMSTRONG,
Petitioner,

v.

MAPLE LEAF APARTMENTS, LTD., a limited partnership;
BROKEN ARROW MALL, INC., a corporation;
OWEN D. YOUNG and ROBERT L. LATCH, d/b/a
YOUNG AND LATCH INVESTMENTS, a general partnership;
FIRSTUL MORTGAGE COMPANY, a corporation;
SACKMAN-GILLILAND CORPORATION, a corporation;
FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA,
a national bank association;
HAMILTON INVESTMENT TRUST, A Massachusetts
business trust;
ABERCROMBIE, PEDIGO AND SMITH, INC.,
and H. HAROLD BECKO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Can title to Indian land, restricted against alienation by Acts of Congress, be acquired by a method other than that prescribed by Congress?

2. Does the Act of April 12, 1926 (44 Stat. 239), which makes the statutes of limitations of Oklahoma applicable to suits by members of the Five Civilized Tribes to recover restricted lands, also subject such claims to equitable defenses, notwithstanding the prohibition against the use of such defenses set forth in the Supplemental Creek Treaty (32 Stat. 500)?

3. Does an Indian, whose lands are restricted against alienation by federal law, have any duty to comply with the Acts of Congress restricting lands from alienation or to inform prospective purchasers of her restricted status?

4. Do federally imposed restrictions against alienation continue after a voluntary partition as they do after a judicial partition?

PARTIES TO THE PROCEEDING

NELLIE ATKINS ARMSTRONG,
Plaintiff-Appellant,

v.

MAPLE LEAF APARTMENTS, LTD., a limited partnership;
BROKEN ARROW MALL, INC., a corporation;
OWEN D. YOUNG and ROBERT L. LATCH, d/b/a
YOUNG & LATCH INVESTMENTS, a general partnership;
FIRSTUL MORTGAGE COMPANY, a corporation;
SACKMAN-GILLILAND CORPORATION,
a corporation;

FIRST NATIONAL BANK & TRUST COMPANY
OF TULSA, OKLAHOMA,
a national banking association;
HAMILTON INVESTMENT TRUST,
a Massachusetts business trust;
ABERCROMBIE, PEDIGO & SMITH, INC., and
H. HAROLD BECKO,
Defendants-Appellees,

RUSKIN F. ARMSTRONG, husband
of Nellie Atkins Armstrong;
MANUEL BROWN, and C. A. WHITEBOOK,
Third Party
Defendants-Appellees,

CREEK NATION OF OKLAHOMA,
UNITED STATES OF AMERICA,
Amici Curiae.

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ABERCROMBIE, PEDIGO AND SMITH, INC.,
and H. HAROLD BECKO,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Nellie Atkins Armstrong requests that Writ of Certiorari issue to the United States Court of Appeals for the Tenth Circuit to review the judgment of that Court rendered May 17, 1979. (Petition for Rehearing denied May 15, 1980.) In support of this Petition, the petitioner states:

OPINIONS OF COURTS BELOW

The first opinion issued in this case emanated from the United States District Court for the Northern District of Oklahoma in an unreported opinion rendered May 3, 1974. That decision was appealed to the United States Court of Appeals for the Tenth Circuit and reversed in *Armstrong v. Maple Leaf*, 508 F.2d 518 (1974). After remand by the United States Court of Appeals for the Tenth Circuit, the case was tried on its merits. The opinion of the District Court in *Armstrong v. Maple Leaf* appears at 436 F.Supp. 1125 (1977). That decision was appealed to the United States Court of Appeals for the Tenth Circuit and is not yet reported. It is the latter opinion of which review is sought.

JURISDICTION

This Court has jurisdiction to review the judgment in question pursuant to the provisions of 28 U.S.C. § 1254(1). The judgment sought to be reviewed was rendered May 17, 1979, and the Petition for Re-Hearing, timely filed, was denied on May 15, 1980.

TREATIES AND STATUTES

Act of July 22, 1790 (1 Stat. 137)
Supplemental Creek Treaty of August 8, 1902 (32 Stat. 500)
Act of May 27, 1908 (35 Stat. 312)
Act of June 14, 1918 (40 Stat. 606)
Act of April 12, 1926 (44 Stat. 239)
Act of January 27, 1933 (47 Stat. 777)
Act of June 26, 1936, "Okla. Indian Welfare Act" (49 Stat. 1967, 25 U.S.C. Secs. 501-509)
Act of August 4, 1947 (61 Stat. 732)

The relevant portions of these treaties and statutes are set forth in the Appendix.

STATEMENT OF THE CASE

Nellie Atkins Armstrong is a Creek Indian of the half-blood, whose lands are restricted against alienation by the Act of Congress of August 4, 1947 (61 Stat. 732). The real estate involved in this action is a portion of the original allotment of her father, Billie Atkins, a full-blood Creek Indian enrolled opposite Roll No. 826, in whose hands the property was restricted against alienation by the Act of Congress of May 27, 1908. The restrictions against alienation of the property in the hands of Billie Atkins were never removed during his lifetime; and, upon his death in 1929, a one hundred twenty (120) acre tract of real estate, of which the lands involved in this action are a part, descended by intestate succession to the plaintiff and her two (2) brothers, each acquiring an undivided one-third interest in the one hundred twenty acre tract. Subsequently, on June 27, 1944, the petitioner and her two (2) brothers, pursuant to an agreement to divide their inheritance in kind, effected in the office of their attorney a voluntary partition by the exchange of quit claim deeds to three (3) separate forty (40) acre tracts comprising the one hundred twenty (120) acre tract inherited from their father.[1] As a result of this partition the petitioner exchanged her *undivided* forty (40) acre interest for a *divided* forty (40) acre interest. The tract received by the petitioner in this voluntary partition includes the property which is the subject of this litigation. For this exchange of deeds, there was no monetary consideration.

The Act of August 4, 1947, imposed restrictions on lands inherited by heirs of half-blood or more when the lands were restricted against alienation in the hands of the person from whom the property was acquired. The restrictions against alienation of the land in the hands of Mrs. Armstrong have been removed.

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[1] Unless the Act of January 27, 1933, is given a retroactive effect, the petitioner's lands would not have been restricted at the time of the voluntary partition. This Act, which extended restrictions to Indians of the half-blood, was held to be prospective only in its application. *Quincy v. Texas Co.*, 185 F.2d 139 (10th Cir. 1950).

In 1964 the petitioner granted to investors an option to purchase the real estate involved in this action. At the time this option was granted, the investors knew that the petitioner was a Creek Indian of the half-blood *and* that the lands were restricted against alienation in her hands. Although the option agreement was not approved by the Probate Division of the District Court, as would be required by the Act of August 4, 1947, it was subsequently assigned to H. Harold Becko, who ultimately exercised a renegotiated option.

On December 3, 1965, petitioner executed a General Warranty Deed to Mr. Becko, from whom the respondents derived their claimed interests. Neither this deed nor the option agreement was approved in the manner required by the Act of August 4, 1947.

The respondents thereafter erected improvements on approximately one-half of the subject property. The remaining half has not been developed.

HISTORY OF LITIGATION

On February 22, 1974, this action was filed in the United States District Court for the Northern District of Oklahoma, asserting two grounds for relief. First, petitioner sought to eject the respondents from her restricted lands; and, second, she sought cancellation of the unapproved deed. Very shortly after petitioner's suit was filed, the defendants, on March 4, 1974, filed a proceeding in the Probate Division of the District Court of Tulsa County, Oklahoma, seeking a belated approval of the 1965 deed pursuant to the provisions of the Act of August 4, 1947. The petitioner then asked the United States District Court for a preliminary injunction to halt these proceedings, contending that retroactive approval of the deed under the Act of August 4, 1947, could not be conducted over her objection. The Trial Court denied the preliminary injunction and petitioner appealed this denial to the United States Court of Appeals for the Tenth Circuit.

First Proceedings in the Court of Appeals

On December 12, 1974, the United States Court of Appeals for the Tenth Circuit issued its opinion in *Armstrong v. Maple Leaf*, 508 F.2d 518 (1974). In reversing the Trial Court's denial of the requested preliminary injunction, the Court of Appeals stated:

> "We are mindful that this is somewhat inequitable to Maple Leaf. In its present posture the plaintiff-appellant, who has not returned the purchase price, would succeed in having title to the land. This question is not before us, but undoubtedly the District Court can on remand and in connection with its ejection suit on its merits adjust the equities between the parties."

> ". . .but approval of the deed is essential to their having a right or interest in the property. A deed without this requisite approval conveys no interest in the land. *Grisso v. United States*, 138 F.2d 996 (10th Cir. 1943). Thus, defendants' losses are a result of their reliance on a deed conceded to be invalid at this time."

The Court of Appeals held that the deed could not be approved without the consent of and over the objection of the Indian-grantor and that an injunction should have issued. In denying the Petition for Re-Hearing the Court of Appeals stated:

> ". . .we call attention to the fact that we recognized in our majority opinion that at the trial of the case on the merits, the Trial Court will be empowered to adjust the equities by charging appellants and crediting appellees for the amount that was originally paid to appellant for the purchase of the property, and the Court may consider issues raised as to the improvements."

Proceedings in the Trial Court after Remand

Following remand by the Court of Appeals, petitioner encountered judicial resistance in obtaining a trial. She was also subjected to subtle judicial pressures to settle her claim for less than its estimated value. Consequently, on August 17, 1975, petitioner filed an Affidavit of Prejudice seeking disqualification of the Trial Judge, which he denied. The petitioner then filed in the United States Court of Appeals for the Tenth Circuit a Petition for Writ of Mandamus, Prohibition and Other Extraordinary Relief, seeking review of the Trial Judge's failure to recuse. This petition was denied by the United States Court of Appeals of the Tenth Circuit without opinion on November 4, 1975.

Two years later the case went to trial. On August 2, 1977, the Trial Court entered a judgment and supporting opinion which is reported at 435 F.Supp. 1125. The Trial Court concluded that the Act of August 4, 1947, was unconstitutional since it bore no rational relationship to its stated purpose of stabilizing land titles, that the Act was unconstitutional since the method set forth for calculation of degree of Indian blood was vague, that the Act was unconstitutional because it was not codified, thus denying the defendants notice of the existence of the Act, and that the petitioner's claim was barred by laches and the equitable concept of "unclean hands." As a result, title to petitioner's restricted land passed to respondents and accrued costs in the approximate sum of $10,000.00 were taxed against petitioner.

Second Proceedings in the Court of Appeals

The judgment of the Trial Court was timely appealed to the United States Court of Appeals and resulted in the opinion, review of which is sought in this Petition. The opinion appealed from is not yet reported. With one judge dissenting, the Court of Appeals upheld the judgment of the Trial Court.

By implication, the opinion of the Court of Appeals overrules a legion of reported cases and turns Indian land law upside down. The new and startling law announced by the Court of Appeals is of vital interest to Northeastern Oklahoma, which was formerly the land allotted to the Five Civilized Tribes.[2] The Court of Appeals reasoned that the Act of April 12, 1926, which expressly made claims of members of the Five Civilized Tribes subject to the Oklahoma statutes of limitations, also encompassed the equitable concept of laches. The Court first characterized the plaintiff's action as one of equitable cognizance to quiet title rather than one at law seeking possession of realty. This characterization is essential for the application of equitable defenses at all since these defenses, under Oklahoma law, are not available in an action at law for ejectment.[3] The Court of Appeals then imposed a duty upon the Indian to comply with the Act of August 4, 1947, or to inform the prospective purchaser of her inability to perform the option agreement. The Court of Appeals then concluded that petitioner's failure to comply with the Act of August 4, 1947, or to inform the purchasers of her inability to pass title, followed by her silence during the erection of improvements, comstituted laches, so that the claim of the plaintiff was defeated, even with respect to the vacant and unimproved land. Although it was superfluous in view of the Court's opinion on the issue of laches, the Court further observed that only an undivided one-third interest of the plaintiff's title would have been restricted by the Act of August 4, 1947, since she had acquired an undivided two-thirds interest from her brothers in the voluntary partition and, therefore, had not acquired the property by inheritance as contemplated by the Act of August 4, 1947.

Judge McKay dissented, noting that title to restricted Indian lands cannot be acquired by equitable means and further

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[2]The Five Civilized Tribes are the Creek, Cherokee, Choctaw, Chickasaw and Seminole Nations.

[3]See for example *Sun Oil Co. v. Fleming*, 469 F.2d 211 (10th Cir. 1972); *Lawrance Tank Corp. v. Burrough*, 476 P.2d 346 (Okl. 1970).

observing that Oklahoma law clearly states that a partition among co-tenant heirs is merely an adjustment of the right of possession and does not transform an inherited estate into one of purchase. Judge McKay, referring to a great body of law, observed that title to restricted Indian lands can be acquired only through the means prescribed by Congress. As Judge McKay noted, the "majority refers to no judicial authority supportive of its position."

Petitioner's Petition for Re-Hearing and Suggestion for Re-Hearing En Banc was denied without further opinion on May 15, 1980.

ORIGINAL JURISDICTION

Federal jurisdiction was initially invoked under 28 U.S.C. § 1331(a).

ARGUMENT

I.

THE COURT OF APPEALS HAS, FOR THE FIRST TIME IN JUDICIAL HISTORY, PERMITTED THE ACQUISITION OF TITLE TO RESTRICTED INDIAN LANDS UPON EQUITABLE GROUNDS WITHOUT THE METHODS PRESCRIBED BY CONGRESS HAVING FIRST BEEN COMPLIED WITH.

The power of Congress to legislate with respect to Indians, having its origin in a specific constitutional grant[4], has been described as plenary. *Worchester v. Georgia*, 6 Pet. 515 (1832); *Antoine v. Washington*, 420 U.S. 194, 95 S.Ct. 944, 44 L.Ed.2d

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[4] Art. 1, Sec. 8, confers upon Congress the power to "regulate commerce with foreign nations, and among the several states, and *with the Indian Tribes*. [Emphasis added.]

129 (1975); *Morton v. Mancari*, 417 U.S. 535, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974). The relationship between the United States and Indians has been said to be a "guardian-ward status." *Morton v. Mancari, supra*. The power—indeed the duty—of Congress to legislate for the purpose of protecting Indian lands has never been doubted. In *Cherokee Nation v. Hitchcock*, 187 U.S. 295, 23 S.Ct. 115, 47 L.Ed. 183 (1902). It was stated:

> "We are not concerned in this case with the question of whether the Act of June 28, 1898, and the proposed actions thereunder, which is complained of, is or is not wise, and calculated to operate beneficially to the interests of the Cherokees. The power existing in Congress to administer upon and guard the tribal property, and the power being political and administrative in its nature, the manner of its exercise is a question within the province of the legislative branch to determine, and is not one for the Courts."

This power and its concomitant duty have been characterized as a "solemn commitment of the government." *Morton v. Mancari, supra*. The courts have historically been faithful to the national commitment and have displayed no hostility toward the Congressional scheme of imposing restrictions on the alienation of Indian land. In fact, the courts "have been quick to vindicate the Congressional policy for the protection of the Indian ward, and to that end void any conveyance of Indian land not in strict conformity with authorizing legislation." *Goddard v. Frazier*, 156 F.2d 938 (10th Cir. 1946).[5]

The imposition of restrictions upon lands in Indian Territory was no historical accident. It was a concession demanded

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[5]The Oklahoma legislature granted additional protection by the enactment of 21 Okl. Stat. Sec. 1836-1836.2, which makes the recording of a deed relating to restricted Indian lands a misdemeanor when the person recording the deed was without color of title. The statute also creates a tort for failure to remove such a deed from the chain of title upon demand.

by the Indian Nations and readily assumed by the federal government. Thus from its inception with the Curtis Act[6] and continuing through very recent legislation, these restrictions have continued as a viable form of preserving unto the Indian his lands. The method by which the restrictions originated is described by W. F. Semple in *Oklahoma Indian Land Titles* (Thomas Law Book Co., 1952):

> ". . .A great majority of the Indians opposed the dissolution of the Tribal Domains and resisted the government's effort to put into effect its plan to allot the Tribal Domains in severalty. The Creeks were the first tribe to insist that in the allotment agreements the government assume the responsibility of putting each allottee in possession of his allotted lands. The leaders of the Creek Tribe insisted that unless the federal government protected the Indian allottee by some type of federal restriction, and unless the government assumed the active burden of keeping the allottees in possession, the fact of issuing a patent would be of no benefit. It was contended that the lands in a short time would be taken over by white people and the Indian would be unable to retain possession. It was this clause inserted in the treaties that placed the burden on the government of putting each allottee in possession of his land. . . ." *W. F. Semple, Oklahoma Indian Land Titles*, Sec. 18, p. 22 (1952).

The statutes imposing restrictions upon Indian lands reflect considerations of important national policy—a moral obligation charged upon the nation to uphold in good faith Indian Treaties. *Lone Wolf v. Hitchcock*, 187 U.S. 560, 23 S.Ct. 481, 47 L.Ed. 299 (1903); *Heckman v. U. S.*, 224 U.S. 413, 32 S.Ct. 424 (1912).

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[6] Act of June 28, 1898 (30 Stat. 495), so named after Charles Curtis, a Kaw Indian and member of the House of Representatives from the State of Kansas.

The national commitment to the Indians had its origin in the Northwest Ordinance of 1787 (1 Stat. 50) which mandated that "[t]he utmost good faith shall always be observed toward the Indians." The First Congress by the Act of July 22, 1790 (1 Stat. 137) provided in Section 4:

> "That no sale of land made by any Indians, or any nation or tribe of Indians within the United States shall be valid to any person or persons. . .unless the same shall be made and duly executed at some public treaty, held under the authority of the United States."

Thus from the beginning it was proclaimed by Congress that title to Indian lands could be acquired only in the manner prescribed by Congress.

Commencing with the Act of June 28, 1898 (30 Stat. 495) through and including the Act of April 26, 1906 (34 Stat. 137), the three million acres of the Creek Nation were allotted in severalty. Today less than one hundred fifty thousand acres of individually owned restricted lands remain within the Creek Nation. All lands were initially allotted with some form of restriction against alienation. Beginning with the Act of May 27, 1908 (35 Stat. 312), only heirs of the full-blood were restricted from alienating the land. By the Act of January 27, 1933 (47 Stat. 777), Congress for the first time, with but one singular exception, extended the restrictions to include heirs of the half-blood. The Act of August 4, 1947 (61 Stat. 732), reaffirmed the Congressional policy of extending restrictions to heirs of the half-blood or more where the lands were restricted in the hands of his ancestor.

Nowhere among the many statutes, treaties, and judicial decisions does there appear any hostility toward this Congressional plan nor an intent to diminish the amount of restricted lands. In fact, the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967, 25 U.S.C. Sections 501-509), reveals an intent to increase the amount of restricted Indian

lands by granting to the Secretary of Interior a preferential right to purchase as a part of the approval procedure by which the deed to restricted Indian lands receives vitality.[7]

The effect of the opinion of the Court of Appeals permitting the passage of title to restricted Indian lands upon equitable principals is to provide a scheme whereby compliance with the Act of Congress can be easily avoided. The Act of August 4, 1947, directs the Probate Judge to act "in the best interest of the Indian" in determining whether to approve a proposed conveyance. Allowance of equitable defenses permits the passage of title to restricted Indian lands under proceedings where the criterion is not what is in the best interest of the Indian but, rather, whether the speculator in Indian lands has suffered harm. Thus the opinion by the Court of Appeals has violated a basic national policy and has watered-down the statutory scheme of restrictions so that title to Indian lands will pass if equity feels that title should pass. The statute is no longer absolute.

II.

THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH ALL DECISIONS OF THIS COURT, OTHER COURTS OF APPEALS AND THE OKLAHOMA SUPREME COURT CONCERNING THE METHOD BY WHICH TITLE TO RESTRICTED INDIAN LANDS MAY BE ACQUIRED.

From the beginning, it was never contemplated that title to restricted Indian land could be acquired by any rule of estoppel or for that matter in any manner except the method prescribed by Congress. In negotiating the Supplemental Creek

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[7]See the House Committee on Indian Affairs' hearing of April 22, 1935, where John Collier, Commissioner of Indian Affairs, describes the landless condition of the Five Civilized Tribes and expresses the government's desire to avoid passage of restricted Indian land to white purchasers.

Treaty (32 Stat. 500, approved June 30, 1902), the Creek Tribal leaders insisted upon protection from the white man's rule of estoppel. After setting forth a scheme of restrictions against alienation of lands, the Supplemental Creek Treaty in Section 16 provides:

> ". . .Any agreement or conveyance of any kind or character violative of any of the provisions of this paragraph shall be *absolutely void* and not susceptible of ratification in any manner, *and no rule of estoppel shall ever prevent the assertion of its invalidity*.[8] [Emphasis added.]

The Court of Appeals concluded that the Supplemental Creek Treaty "is in no way involved" since "any restrictions on the application of estoppel have long since expired." All restrictions originated with the Original Creek Treaty and the Supplemental Creek Treaty and have merely been extended and reimposed by Congress from time to time. If, as the Court of Appeals indicates, restrictions upon the alienation of this land are less than they once were, it is imperative that Oklahoma practitioners know the nature and extent of these restrictions. It is of even greater importance that all know what consequences flow from failure to comply with the various Acts of Congress. Even if, as the Court of Appeals concluded, the Supplemental Creek Treaty has expired, it would appear that it still constitutes a lucid expression of the intent of the parties, especially that of Congress in imposing and extending restrictions upon the alienation of Indian lands. This Court held long ago that such a statute, "having provided the way in which

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[8]Section 16 is a two-paragraph section–the first imposing restrictions against alienation and, the second containing the language quoted above. The term "paragraph" as used in this treaty is not limited, however, to the second grammatical paragraph but refers to all of Section 16. *Alfrey v. Colbert*, 168 F. 231 (8th Cir. 1909); *Barns Stonebreaker*, 113 P. 903 (Okl. 1909). Section 17 of the Supplemental Creek Treaty, restricting the power of allottees and heirs to lease lands, contains identical language.

these half-breed lands could be sold, by necessary implication prohibited their sale in any other way." *Smith v. Stevens*, 10 Wall. 321 (1970); *Jones v. Meehan*, 175 U.S. 1 (1899). The opinion of the Court of Appeals conflicts directly with these decisions. The original legislative intent is too apparent for serious debate. The methods prescribed by Congress by necessity must be the exclusive method for the acquisition of title to restricted Indian lands. If this is not the case, the Indians will be denied the beneficial protection that Congress intended to extend to them.

Judge McKay observed in his dissent that the majority opinion of the Court of Appeals cited no judicial authority supportive of its position. In fact, *there is no authority* to support the majority opinion of the Court of Appeals. The decision of the Court of Appeals conflicts with *all* recorded decisions of this Court, of *all* of the Circuits, *all* of the United States District Courts, *all* decisions of the Oklahoma Supreme Court, and the interpretation of the Department of Interior. The opinion of the Court of Appeals conflicts with a unanimous body of law which has been sustained without falter or dissent for the last century.

The opinion of the Court of Appeals in *Armstrong II* conflicts drastically with its opinion in *Armstrong I*.[9] In *Armstrong I* the Court of Appeals held that a deed without the requisite approval conveys no interest in the land and noted that the statute is absolute in its requirement. The Court observed that any deed not executed in conformity with the statute is absolutely void and even the good faith inherent in the conveyances is insignificant. In *Armstrong II* the Court of Appeals held that the statute is not absolute and that good faith inherent in the conveyances is most significant. Reconciliation of the two utterances by the Court of Appeals is impossible.

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[9]We will refer to the first opinion of the Court of Appeals, *Armstrong v. Maple Leaf*, 508 F.2d 518, as *Armstrong I*. The opinion of which review is sought in this Petition, we shall refer to as *Armstrong II*.

The interest of the United States in Indian lands is great. It has been said that Indian land subject to federally imposed restrictions is property in which the United States has an interest. *U. S. v. Hellard*, 322 U.S. 363, 64 S.Ct. 985, 88 L.Ed. 1326 (1944); *Alonzo v. United States*, 249 F.2d 189 (1957). Every court which has ever addressed the problem has held that a deed by an Indian whose lands are restricted against alienation is absolutely void unless acquired in the method prescribed by law. *Franklin v. Lynch*, 233 U.S. 269, 34 S.Ct. 505, 58 L.Ed. 954 (1914); *Heckman v. United States*, 224 U.S. 413, 32 S.Ct. 424, 56 L.Ed. 821 (1912); *Bunch v. Cole*, 263 U.S. 250, 44 S.Ct. 101, 68 L.Ed. 290 (1923); *Privette v. U.S.*, 256 U.S. 201 (1921); *Springer v.Townsend*, 336 F.2d 397 (10th Cir. 1964); *Haymond v. Scheer*, 543 P.2d 541 (Okl. 1975); *Bacher v. Patencio*, 232 F.Supp. 939 (S.C. Cal. 1964, aff'd per curiam 368 F.2d 1010 (9th Cir. 1966). An endless chronicle of cases could be cited for the proposition that such a deed is absolutely void. In summarizing the law, Professor Ringold stated:

> ". . .it is important to understand that every conveyance or alienation by a restricted Indian is absolutely *void*–not voidable or something less arbitrary–but just as if the transfer had never been attempted. Nor does it matter how many times the restricted Indian tried to convey to the same or different grantees–all are nullities and the title examiner may ignore them when there is a valid conveyance in the chain of title." A. F. Ringold, *Indian Land Law–Some Fundamental Concepts for the Title Examiner*, 10 Tuls. L.J. 321 (1975).

This Court has frequently stated that neither estoppel, equity, or laches would ever operate to pass title to restricted Indian lands. *Heckman v. United States*, 224 U.S. 413, 32 S.Ct. 424, 56 L.Ed. 821 (1912), was an action by the United States to cancel deeds from 3,715 Indians to 30,000 acres of land located in Northeastern Oklahoma, all of which were acquired

in methods other than that prescribed by Congress. The contention was made that prior to cancellation of the deeds "equitable restoration" should be enforced. Rejecting this contention, this Court stated:

> ". . .where, however, conveyance has been made in violation of the restrictions, it is plain that return of the consideration cannot be regarded as an essential prerequisite to a decree of cancellation. Otherwise, if the Indian grantor had squandered the money he would lose the land which Congress intended he should hold, and the very incompetence and thriftlessness which were the occasions for the measures for his protection would render them of no avail. The effectiveness of the Act of Congress is not thus to be destroyed. The restrictions were set forth in public law and were matters of general knowledge. Those who dealt with the Indians contrary to these provisions are not entitled to insist that they should keep the lands if the purchase price is not repaid, and thus frustrate the policy and the statute. . . ."

Prior to the Act of April 12, 1926, the decided cases adhered without exception to the rule that neither estoppel, limitations nor equities would ever operate to pass title to restricted Indian lands. *Franklin v. Lynch*, 233 U.S. 269, 34 S.Ct. 505, 58 L.Ed. 954 (1914); *Mullen v. Pickens*, 250 U.S. 590, 40 S.Ct. 31, 63 L.Ed. 1158 (1919); *Ewert v. Bluejacket*, 42 S.Ct. 442, 259 U.S. 129, 66 L.Ed. 858 (1922); *Balthrop v. Clark*, 94 Okl. 294, 222 P. 520 (1924); *Collins v. Beard*, 148 P. 856 (1915); *Parks v. Berry*, 169 P. 884 (Okl. 1917); *Brown v. Minshall*, 202 P. 1037; *Probert v. Kibby*, 209 P. 916 (Okl. 1922); *Okla. Oil Company v. Bartlett*, 236 F. 488 (8th Cir. 1916); *Bunch v. Cole*, 263 U.S. 250, 44 S.Ct. 101, 68 L.Ed. 290 (1923); *Swanson v. Grayson*, 236 P. 618 (Okl. 1925); *U.S. v. Brown*, 15 F.2d 565 (N.D. Okl. 1927). Even statutory creations of equity, such as the Occupying Claimant's Act[10] do not

[10] 12 Okl. Stat. Sec. 1481.

apply. *Cravens v. Amos*, 166 P. 140 (Okl. 1917); *Kelly v. Watkins*, 217 P. 191 (Okl. 1928); *Wrigley v. McCoy*, 175 P. 259 (Okl. 1918). The good faith inherent in conveyances obtained from restricted Indians is unimportant, as is whether the disposition was made upon commendable consideration. *United States v. Brown*, 8 F.2d 564 (8th Cir. 1925); *McCurtain v. Palmer*, 121 F.2d 1009 (10th Cir. 1941); *Armstrong v. Maple Leaf*, 508 F.2d 518 (10th Cir. 1974). It has even been held that fraudulent misrepresentations on the part of an Indian in using his restrictions as a sword rather than a shield are insufficient to form a basis for an estoppel which will pass title. *U. S. v. Walters*, 17 F.2d 116 (8th Cir. 1926). The Courts have held that one in possession of Indian land under an unapproved deed is a mere trespassor. *Johnson v. Butler*, 245 P.2d 720 (Okl. 1952). When an Indian brings an action to recover land, possession of which was acquired in a method other than that prescribed by Congress, neither the return of the consideration nor any other condition precedent may be attached to the cancellation of the deed in securing immediate possession of the land for the Indian. *Bacher v. Patencio*, 232 F.Supp. 939 (D.C. Cal. 1964) aff'd. 368 F.2d 1010 (9th Cir. 1966); *Oates v. Freeman*, 57 Okl. 449, 157 P. 74 (1916); *Heckman v. U. S., supra*.

The Act of April 12, 1926 (44 Stat. 239), provided that after the date of that Act the Oklahoma Statutes of Limitations would be applicable to claims by members of the Five Civilized Tribes. The question is, therefore, whether by passage of the Act of 1926 Congress intended to make applicable to claims by members of the Five Civilized Tribes the equitable defenses, including laches, which until that time had been universally unavailable. The Court of Appeals held that the Act of 1926, making the Oklahoma Statutes of Limitations applicable, also made the doctrine of laches applicable to claims by members of the Five Civilized Tribes. The effect of this ruling is to diminish significantly the protection which Congress intended to afford the Indian. The Court of Appeals has given the Act of 1926 a strained construction against the Indian and for the purpose of defeating federally imposed restrictions.

The decision of the Court of Appeals is contrary to those cases which have been decided after the Act of 1926 in which equitable defenses were raised. *Heckman v. Ewert*, 22 F.2d 81 (8th Cir. 1927); *United States v. Gilbertson*, 111 F.2d 978 (7th Cir. 1940); *Naharkey v. Sand Springs Home*, 59 P.2d 289 (Okl. 1926); *Scott v. Dawson*, 58 P.2d 538 (Okl. 1936); *Haymond v. Scheer*, 543 P.2d 541 (Okl. 1975).

Smith v. Williams, 190 P. 555 (Okl. 1920), describes in classic terms the reasons for the unavailability of equitable defenses in actions such as this:

> "From the beginning, it has been the settled policy of this court, and also of the federal courts, in determining the validity of deeds to restricted Indian lands, to look to the acts of Congress alone. . .
>
> This policy has been pursued by the courts, not because the courts have overlooked the fact that hardships which seemed inequitable has resulted in some instances, but because Congress have definitely and specifically described the manner of acquiring lands of the Five Civilized Tribes, and has expressly declared that title acquired in any other manner is absolutely null and void. . .
>
> The principles of equity, though not overturned nor disregarded, are not controlling in such cases, for the reason that they are not applicable. The right on the part of an Indian to alienate his land, and the right on the part of any person to purchase such land and to acquire valid title thereto, is peculiarly and strictly a statutory right created by Acts of Congress, and which right is not possibly available except through the means which Congress has prescribed, for Congress has expressly said that any attempt to acquire such right, except through the means prescribed by Congress, shall be absolutely null and void. Therefore, title to restricted Indian land cannot be acquired from the allottee upon equitable grounds. The methods prescribed by Congress are exclusive."

Although decided prior to the Act of 1926, *Smith v. Williams* was reaffirmed as the law of the State of Oklahoma in *Scott v. Dawson*, 58 P.2d 538 (Okl. 1936). *Smith v. Williams* has also been cited approvingly by this Court in *Sperry Oil Company v. Chisholm*, 264 U.S. 488, 44 S.Ct. 372, 68 L.Ed. 803 (1924). The prohibition against the use of equitable defenses has been reaffirmed by the Oklahoma Supreme Court in very recent years. In *Haymond v. Scheer*, 543 P.2d 541 (Okl. 1975), the Oklahoma Supreme Court stated:

> "It is well settled but there can be no adverse possession against the Federal Government which can form the basis of title by estoppel or under the statute of limitations; *and it has been held that the same rule applies where the lands involved are lands that have been allotted to Indians with restrictions upon alienation.*" [Emphasis added.]

The Court of Appeals' opinion is the only recorded judicial decision in history allowing the use of equitable defenses by those who have taken Indian lands contrary to the methods prescribed by Congress. It is a drastic and solitary departure from more than a century of law. As such, it is a breach of the national commitment to these vanquished people and it is an open invitation to the virtual annihilation of the remaining restricted lands of the Five Civilized Tribes.

III.

THE IMPOSITION OF A DUTY UPON RESTRICTED INDIANS TO PERFORM UNDER THE PROVISIONS OF A VOID CONTRACT OR INFORM PROSPECTIVE PURCHASERS OF THE TERMS OF AN ACT OF CONGRESS IS INCONSISTENT WITH NATIONAL OBJECTIVES.

Concerning the contract entered into between the plaintiff and Mr. Becko, the Court of Appeals stated:

> ". . .it was her obligation to meet the contract requirements, and thereby, among other things, to comply with the 1947 Act which she and her attorney were apparently familiar.
>
> Thus, if the plaintiff knew she was to deliver or was delivering an "invalid" deed, she had a duty, if the transaction was in good faith, to advise the buyer of her inability to perform the contract. It was the seller's duty to reveal that she could not perform under the contract, that she was unable to deliver a valid deed, as she now asserts. . . ."[11]

One will not find in any of the Acts of Congress, in the Congressional debates and discussions, nor in any judicial decision, any notion that an Indian upon whom restrictions have been imposed must give legal advice to prospective purchasers. As the Court of Appeals noted, the purchaser, Mr. Becko, was aware that the petitioner was a Creek Indian of the half-blood and that she had acquired the property by inheritance from her father. It is the Act of August 4, 1947, of which Mr. Becko now claims ignorance. It is her "inability" which the Court says petitioner must relate to Mr. Becko. Thus the duty of complying with the Act of August 4, 1947, has been imposed upon the restricted Indian rather than upon a competent purchaser. The imposition of such a duty upon one legally classified as incompetent is contrary to the pronouncement that this Court made in *Heckman v. United States*, 224 U.S. 413, 32 S.Ct. 424 (1912). The clear message of *Heckman* is that all who deal with the Indians must comply with such statutes.

The imposition of such a duty upon the Indian effectively emasculates all existing federal legislation restricting alienation of Indian lands, for any Indian who fails to discharge this duty

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[11] The fallacy of the reasoning is that the contract itself is void for want of approval. See *Mann v. Brady*, 196 Pac. 346 (Okl. 1921); *O'Connor v. Johnson*, 229 Pac. 146 (Okl. 1924); *Whitney v. Schwabacher*, 298 Pac. 879 (Okl. 1931).

will be barred by laches or other equitable considerations. Thus no longer will it be necessary to comply with the Act of August 4, 1947, and Indian land will be "up for grabs." The Court of Appeals has sanctioned a remedy so broad that the systematic restriction of Indian lands is meaningless and the Congressional desire to surround the Indian with the shield of federal protection has been totally frustrated.

IV.

THE COURT OF APPEALS' CONSTRUCTION OF THE ACT OF 1926 IS A STRAINED INTERPRETATION DESIGNED TO RENDER MEANINGLESS THE STATUTORY SCHEME OF RESTRICTING ALIENATION OF INDIAN LANDS.

Nothing in the Act of April 12, 1926, would seem to make laches applicable to claims by members of the Five Civilized Tribes. Had Congress intended to make equitable defenses available it would have been simple to say so. The Act makes specific reference to the running of the "full statutory period." The construction adopted by the Court of Appeals would require one to be capable of calculating when the "full statutory period" of laches has run. The construction given the Act is contrary to the explicit provisions of the Supplemental Creek Treaty which prohibit ratification of such a deed or the application of any rule of estoppel. The construction by the Court of Appeals transforms the approval proceedings from a proceeding with a competitive bidding under the aegis of the Department of the Interior in which the sole criterion is the best interest of the Indian into an adversary proceeding in which the criterion is harm suffered by a purchaser who has failed to follow the law.[12]

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[12]Hearings conducted before the Subcommittee of the Committee on Indian Affairs prior to the passage of the Act of 1926 show clearly that Congress was thinking only of the passage of a term of fifteen years. Hearings, January 1925, pp. 19-29.

Long ago this Court enunciated the rule that statutes enacted for the benefit of Indians are to be liberally construed and interpreted in favor of the Indian and as the Indian would have understood them. *Northern Cheyenne Tribe v. Hollowbreast*, 425 U.S. 649, 96 S.Ct. 1793, 48 L.Ed.2d 274 (1976); *Martin v. Lewallen*, 276 U.S. 58, 48 S.Ct. 248, 72 L.Ed. 467 (1928); *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 90 S.Ct. 1938, 25 L.Ed.2d 615 (1970). This Court has further stated that doubtful expressions in Indian Treaties of Statutes should be construed in favor of the Indian. *Choctaw Nation v. Oklahoma, supra; Worchester v. Georgia*, 6 Pet. 515 (1832). The construction utilized by the Court of Appeals is plainly one against the Indian and one designed to defeat rather than further the statutory scheme of restriction. Although the Court of Appeals was quite careful to note a distinction between members of the Five Civilized Tribes and Indian receiving lands under the General Allotment Act, the rationale of the opinion would subject the claims of all Indians to equitable defenses. Thus the decision can affect every Indian in the United States and every tract of Indian land. The consequences on Indian holdings will be staggering and will render all Indian lands subject to the whims of the chancellor. For this reason, this Court should review the opinion of the Court of Appeals.

Of even greater consequence, is the manner in which the Court of Appeals' opinion will operate to reward Indians who resort to violence and self-help rather than the courts in endeavoring to regain possession of restricted lands. The Court of Appeals stated that "laches is strictly a matter of defense and is not and cannot be used to affirmatively establish a claim." The Court of Appeals further stated that laches is solely a defensive measure to use against an inequitable claim. Thus, had the plaintiff, rather than resorting to the courts for resolution of her dispute, forcibly obtained possession of the land in question, the respondents would have been powerless to remove her or defeat her claim. They could not have brought ejectment proceedings against her as this would require the affirmative use of laches; and, since the deed was absolutely void, there would be no other remedy of which the

respondents could avail themselves. Thus the petitioner, had she resorted to self-help, would have been in possession of her lands and the respondents would have had no remedy whatsoever. It appears to be a questionable policy which would enable one in the position of petitioner to win absolutely by resorting to self-help and lose absolutely by resorting to the process which our society has established for the peaceable settlement of claims.

Thus when another Indian claim arises there can be no doubt that the Indian will be advised to obtain possession by force, for this will be the only method by which the claim of an Indian whose lands have been taken without compliance with the Acts of Congress cannot be defeated.

The opinion of the Court of Appeals produces one other anomalous result which has the effect of denying petitioner equal protection of the laws. Had the petitioner not been an Indian whose lands are restricted against alienation, the Oklahoma Occupying Claimant's Act[13] would have been applicable. It is settled law that the Occupying Claimant's Act is not applicable with respect to Indian lands since that Act contemplates an alienation of the property. *Cravens v. Amos*, 166 P. 140 (Okl. 1917); *Kelly v. Watkins*, 217 P. 191 (Okl. 1928); *Wrigley v. McCoy*, 175 P. 259(Okl. 1918). Thus the petitioner, because of the absolute protection which Congress intended to confer upon her, is placed in a worse position than were she non-Indian. Were she not Indian, under the Oklahoma Occupying Claimant's Act she would have at least recovered the value of her real estate; but, because she is an Indian, and only because she is an Indian, she is denied even the relief afforded by this equitable statute. It is an even stranger twist of law when one considers that the reason the Occupying Claimant's Act is inapplicable is because it contemplates an alienation of restricted lands in a method other than that prescribed by Congress.

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[13] 12 Okl. Stat. § 1481.

Until now, the Courts of our country have been favorable to the national commitment to the Indian and "have always been quick to vindicate the Congressional policy for the protection of the Indian ward, and to that end void any conveyance of restricted land not in strict conformity with authorizing legislation." *Goddard v. Frazier*, 156 F.2d 938 (10th Cir. 1946). In this case the system, under the strain of the consequences of enforcing the law, has crumbled. The Court of Appeals simply could not come to grips with the financial hardships which adherence to the law would impose upon the respondents. Thus, a new law was fashioned by judicial fiat which is directly opposed to the absolute language of the Act of August 4, 1947.

V.

THE RULING BY THE COURT OF APPEALS THAT A VOLUNTARY PARTITION AMONGST HEIRS EXTINGUISHES RESTRICTIONS IS CONTRARY TO THE INTENT OF CONGRESS, DIMINISHES FEDERAL PROTECTION FOR RESTRICTED INDIAN WARDS, IS CONTRARY TO OKLAHOMA LAW AND SUBJECTS VAST QUANTITIES OF LAND TO SALE FOR DELINQUENT *AD VALOREM* TAXES.

Ignoring unequivocal law, the Court of Appeals concluded that by reason of the voluntary partition the plaintiff had acquired only an undivided one-third interest in the subject land by inheritance from her father; and had acquired the remaining two-thirds by purchase from her brothers when she accepted quit claim deeds from them. The Court of Appeals noted that Congress only intended to reach interests acquired by inheritance. The only authority cited by the Court of Appeals was an old Oklahoma case, *Boyd v. Weer*, 253 P. 988 (Okl. 1927). As the dissent observed, *Boyd v. Weer* was concerned with a transaction which occurred prior to the Act of June 14, 1918 (40 Stat. 606). The Act of 1918 authorized for the first time judicial proceedings to partition inherited land amongst

heirs. Prior to that Act, the courts had consistently held that partition was a form of alienation which required approval. The reasoning for this conclusion by the courts was that restricted lands could be conveyed only in the methods prescribed by Congress. Thus, the Oklahoma Supreme Court in *Boyd* was forced to conclude that following an approved partition restrictions were extinguished. Had the *Boyd* exchange occurred after the passage of the Act of 1918, the exchange would have been treated as it was in *In Re Pryor's Estate*, 181 P.2d 279 (Okl. 1947). The Court of Appeals totally ignored Oklahoma law which is controlling and determinative. The Oklahoma Supreme Court has announced the general rule that partition does not pass title but merely adjusts the different rights of the parties to possession. *Perry v. Jones*, 150 P. 168 (Okl. 1915); *In Re Moran's Estate*, 51 P.2d 277, 103 ALR 227 (Okl. 1935); *In Re Mullendore's Estate*, 297 P.2d 1094 (Okl. 1956). In the latter case, the Oklahoma Supreme Court explicitly condemned the very same interpretation which the Court of Appeals followed here as being an erroneous pronouncement of Oklahoma law, stating,

> "This Court is *committed* to the general rule that a partition deed does not pass title, but merely adjusts the different rights of the parties to possession."

Thus an important state question has been decided in a way which conflicts with applicable state law—state law which is unequivocal.

The holding by the Court of Appeals would yield the incongruous result that after a judicial partition lands would continue fully restricted whilst after a voluntary partition there would exist undivided restricted interests. This would produce the anomalous result that Indians desiring to partition inherited lands would have to submit to judicial proceedings lest they lose the restricted nature of their land. It is difficult to conceive that Congress would have intended to force Indians to submit

to judicial partition proceedings with their attendant expenses for the sole purpose of preserving the restricted status of their land.

The majority opinion of the Court of Appeals did not even make note of the Act of June 14, 1918 (40 Stat. 606). This Act provides that lands of full-blood members of the Five Civilized Tribes shall be subject to the laws of the State of Oklahoma providing for a partition of real estate. The Act states:

> ". . .any lands allotted in such proceedings to a full-blood Indian, or conveyed to him upon his election to take the same at appraisement, shall remain subject to all restrictions upon alienation and taxation obtaining prior to such partition."

When the Act of 1918 was enacted, only full-blood heirs were restricted. Thus the reference to "full-blood members." Subsequently, by the Act of 1933 and the Act of 1947 the restricted class was expanded to include those ~~of~~ the half-blood or more. Therefore, "inherited and devised lands belonging to half-bloods are subject to the same restraints against alienation as existed before partition." *W. F. Semple, Oklahoma Indian Land Titles Annotated*, § 232 (Thomas Law Book Company, 1952). The Court of Appeals itself has held that the Act of 1918 is applicable to half-blood heirs. *U. S. v. Watashe*, 117 F.2d 947 (10th Cir. 1941). Thus Congress fully intended for restrictions to survive a partition. It should also be noted that Congress has also provided that the Oklahoma laws of inheritance apply to members of the Five Civilized Tribes. Section 9, Act of May 27, 1908 (35 Stat. 312). From this, it follows that it is immaterial whether the issue is characterized as one of inheritance or partition, since Oklahoma law applies in either instance pursuant to Congressional directive.

The Affidavit of the Field Solicitor for the United States Department of Interior, which is reproduced in the Appendix, reflects that the Department's long-standing interpretation

has been that an exchange of deeds between heirs is still an acquisition by inheritance rather than by purchase and that restrictions continue after such an exchange. In fact, the Department has, itself, conducted partitions in this fashion and has encouraged private attorneys to exchange deeds rather than to institute needless partition suits. Thus the Court of Appeals' opinion operates to remove restrictions in whole or in part on much Indian land and is most disruptive of the public policy of the United States favoring continuation of restrictions. It operates to the prejudice of those Indians who have relied upon the Department's interpretation. This Court has stated that the opinion of the Department of the Interior is the demonstrative criterion for the construction of Indian statutes. *Blanset v. Cardin*, 256 U.S. 319, 4 S.Ct. 519, 65 L.Ed. 950 (1921).

The result of the Court of Appeals' holding that a voluntary partition destroys restrictions against alienation could be disasterous. Most restricted land is also exempt by federal law from *ad valorem* taxation by the State of Oklahoma.[14] Only lands upon which there exists restrictions against alienation may be designated as tax exempt by Congress. Semple, *supra*, Section 488.[15] Thus, when restrictions are removed, tax exemption ceases. Therefore, if a voluntary partition diminishes or destroys restrictions, in every instance in which there has been a voluntary partition the lands are now fully or partially taxable and have been since the date of the voluntary partition. Thus, in all instances in which voluntary partitions have occurred, *ad valorem* taxes will, under the Court of Appeals' opinion, be due for all years back to the date of their partition, subject only to the Oklahoma statute of limitations.[16] Thus in all instances where heirs have conducted voluntary partitions,

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[14]See W. F. Semple, *Oklahoma Indian Land Titles Annotated*, Ch. 24 (Thomas Law Book Company, 1952).

[15]This is due to the language "restrictive and tax exempt" used in the Act of 1933.

[16]The only limitations to the Oklahoma Statutory lien for *ad valorem* taxes is fifteen (15) years. 68 Okl. Stat. Sec. 24233 (1971).

their lands have lost their exemption from taxation. The decision will, therefore, virtually annihilate what is left of the lands of the Five Civilized Tribes in Oklahoma.

VI.

THE COURT OF APPEALS HAS AFFIRMED WITHOUT COMMENT THE TRIAL COURT'S DECISION HOLDING THE ACT OF AUGUST 4, 1947, UNCONSTITUTIONAL, THEREBY CREATING HAVOC AND INSTABILITY IN OKLAHOMA LAND TITLES.

The Trial Court held the Act of August 4, 1947, unconstitutional on grounds previously discussed. This decision has been affirmed by the Court of Appeals. Thus we in Oklahoma are confronted with a decision holding the Act of August 4, 1947, unconstitutional which has not been disturbed on appeal. The results are creating havoc with land titles in Oklahoma. Lawyers are uncertain whether compliance with the Act of August 4, 1947, is now necessary. Obviously, a deed from a restricted Indian is not necessarily void since it may be the springboard from which the equitable concept of laches can transfer title. Thus unapproved deeds appearing in abstracts of title can no longer be ignored and curative proceedings are being required where none were required before. The cost to the citizens of Oklahoma in quiet title suits to cancel ancient deeds alone will be staggering.

If the Act of August 4, 1947, is in fact unconstitutional, concern has arisen whether compliance with the Act of August 4, 1947, is at all necessary. If the Act is unconstitutional, may one merely accept a deed from an Indian and go his way? If it is constitutional, what are the effects of such a deed? For this reason, it is imperative that this Court grant certiorari and pass upon the constitutionality of the Act of August 4, 1947.

CONCLUSION

The Court of Appeals' decision in this case is inconsistent with every decision on the subject ever rendered by this Court. It is inconsistent with every decision ever rendered by any other Court of Appeals. It is inconsistent with every expression made by the Oklahoma Supreme Court. It marks the first time in history that title to restricted Indian land has been acquired by equitable means. It is the first time in history where ignorance of a duly enacted law of Congress has been held to entitle one to equitable relief. And it is certainly the first time in history that one under a disability has been held under a duty to give legal advice to a competent purchaser. The decision of the Court of Appeals is a dangerous encroachment upon the Congressional prerogative.

For these reasons, certiorari should be granted.

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